

## **REMARKS**

After entry of this response, Claims 39, 41 and 43-45 are pending in the present application. Applicant respectfully requests reconsideration by the USPTO in light of the following remarks.

### **I. Double Patenting Rejection**

Claims 39, 41 and 43-45 are rejected on the ground of nonstatutory obviousness double patenting as being unpatentable over claims 17-19 of U.S. 6,613,062. A telephone call was made to Examiner Darwin Erez on January 9, 2008 to obtain clarification of the above double patenting rejection. Applicant appreciates the Examiner's taking time to resolve the issue. A summary of Applicant's remarks relating to the rejection is provided below.

The present application is a divisional application of the parent application 09/430,096, now issued as U.S. 6,613,062. In the initial examination of the application 09/430,096, the USPTO issued a restriction requirement whereby the claims of the then pending 09/430,096 application were restricted into three groups. A copy of the office action dated September 19 2000 is attached. The USPTO asserted that the claims of Group III, which form the basis for the present application, were patentably distinct from the claims of the now issued U.S. 6,613,062. In its restriction requirement, the USPTO stated that the claims of the then pending 09/430,096 application and the present application were unrelated because "the different inventions have different functions."

Therefore, the USPTO's assertion that the claims in the present application are not patentably distinct from each other is precluded by its earlier affirmation that the claims are patentably distinct. Consequently, Applicants respectfully request withdrawal of the double patenting rejection of Claims 39, 41 and 43-45.

## **II. Rejection under 35 USC §103**

In the office action, the USPTO issued a 35 U.S.C. § 103(a) rejection of Claims 39, 41 and 43-45 as being unpatentable over Okada et al. (U.S. 5,672,158, hereinafter "Okada"). Applicant respectfully traverses.

Contrary to the USPTO's assertion, the structure of FIG. 5 in Okada fails to teach or suggest the locking mechanism as stated, for example, in claim 39. Claim 39 includes a locking mechanism wherein "in a second rotational position of the inner tubular member relative to the outer tubular body, the inwardly and outwardly directed projections are caused to engage one another in an interlocking relationship to prevent longitudinal movement of the inner tubular member within the lumen of the outer tubular body" among other things. The locking mechanism of the device disclosed by the Okada reference includes inwardly directed projections and outwardly directed projections which, as best seen in FIG. 5 and FIG. 6, will only prevent relative axial rotation when engaged but fail to prevent longitudinal movement. See col. 2, lines 21-22. The locking mechanism of claim 39 prevents longitudinal movement of the inner tubular member when engaged. Preventing longitudinal movement facilitates the stabilization of the device upon desired positioning of the inner tube.

Furthermore, the teachings of the Okada reference teach that the inner tubular member '3' is always engaged when inserted into the outer tubular member '2'. Thus the Okada reference clearly fails to teach or suggest a locking mechanism wherein in a first rotational position longitudinal movement is permitted and in a second rotational position, longitudinal movement is prohibited as stated for example in claim 39. Moreover, the teachings of the Okada reference clearly preclude rotational movement from the first to the second position because the structure of the projections of FIG. 5 and FIG. 6 would hinder such movement.

Yet further, the USPTO recognizes that the Okada reference fails to teach or suggest a plurality of rings as stated in Claim 39. Nevertheless, the USPTO has maintained that it would have been obvious "to add a plurality of projections

in the form of a ring." This assertion completely disregards the structure of the projections disclosed by the Okada reference which are taught to extend longitudinally across the inner lumen to prohibit axial rotation. Based on the teaching of the longitudinally extending protrusions, it would be impractical to dispose a plurality of rings around the circumference of the inner lumen. Thus the USPTO's assertion is clearly precluded by the teachings of the Okada reference and withdrawal of the rejection to Claims 39, 41 and 43-45 as being unpatentable over Okada is respectfully requested.

### III. Conclusion

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this Amendment, the Examiner is requested to telephone the undersigned attorney to attend to those matters.

Respectfully submitted,

MICHAEL E. LECKRONE ET AL.

February 11, 2008  
Date

/Carol F. Barry/  
Carol F. Barry  
Reg. No. 41,600  
(763) 514-4673  
Customer No. 27581